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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------------|------------------|
| 10/790,471 | 03/01/2004 | E. Wynn Berry JR. | 16611 | 9949 |
| 50659 | 7590 | 07/01/2005 | EXAMINER HOOK, JAMES F | |
| BUTZEL LONG DOCKETING DEPARTMENT 100 BLOOMFIELD HILLS PARKWAY SUITE 200 BLOOMFIELD HILLS, MI 48304 | | | ART UNIT 3754 | PAPER NUMBER |

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/790,471 | BERRY, E. WYNN | |
| | Examiner | Art Unit | |
| | James F. Hook | 3754 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5-27-04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 11, and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,698,442 in view of Gauthier. The '442 patent discloses all of the recited structure with the exception of using a plurality of fasteners to hold the second conduit in the main Conduit. The patent to Gauthier discloses the recited system for holding a smaller inner secondary conduit 6 within a larger diameter outer conduit 7, where a plurality of fasteners formed of arcuate shape to hold the inner conduit along the wall of the outer conduit are provided by hoops such as 70a which can be formed of plastic material and are held by adhesive to the wall of the outer pipe, and the inclusion of the extra portion sheath it is considered that the adhesive would also lie between the hoops. It would have been obvious to one skilled in the art to modify the '442 patent by providing a

Art Unit: 3754

plurality of fasteners to hold the secondary pipe to the wall as suggested by Gauthier as such would prevent unwanted motion of the secondary pipe and would therefore save money by preventing failure of the secondary pipe due to rubbing or movement.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fair. The patent to Fair discloses the recited combined sewer pipe for conveying storm water and other materials where the use for effluent is considered merely intended use where the system of Fair is capable of carrying effluent comprising a large diameter first sewer pipe 30 having an interior surface where such is used for sewage of which storm water is a known inherent material carried by sewers, a smaller diameter second sewer pipe 32 where use of such for effluent is merely intended use as set forth above, a fastener 36 attaches the second pipe to the inside of the first pipe.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 10, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fair in view of Finzel. The patent to Fair discloses all of the recited structure with the exception of stating what material the second pipe is made of, and providing a liner inside the pipe trapping the second pipe between the liner and the outer pipe. The patent to Finzel discloses the recited sanitizing pipe system for waste water comprising an outer pipe AR, a second pipe LR, a system of supports AH that in combination with a liner IL1 trap and hold the second conduit inside of the outer pipe, where Finzel states the casings which inherently would include the extra second pipe above, are made of HDPE. It would have been obvious to one skilled in the art to modify the second pipe of Fair to be formed of any material where it is known in the art to form secondary pipes of HDPE, and to provide a liner as suggested by Finzel where such would provide a smoother bore for the inner pipe, and would still allow for the secondary pipe, which would increase flow and thereby make the pipe more efficient, and forming the second pipe of a plastic material would allow such to last longer thereby saving money where plastics are known to be less likely to degrade over time.

Claims 3-9 and 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fair in view of Gauthier. The patent to Fair discloses all of the recited structure with the exception of providing a plurality of fasteners attached by adhesive to the outer conduit filling gaps between the fasteners, forming the fasteners of plastic, and where the fasteners are arcuate to hold an inner conduit and contact the outer conduit. The patent to Gauthier discloses the recited system for holding a smaller inner secondary conduit 6 within a larger diameter outer conduit 7, where a plurality of fasteners formed

of arcuate shape to hold the inner conduit along the wall of the outer conduit are provided by hoops such as 70a which can be formed of plastic material and are held by adhesive to the wall of the outer pipe, and the inclusion of the extra portion sheath it is considered that the adhesive would also lie between the hoops. It would have been obvious to one skilled in the art to modify the generic fasteners mentioned in Fair by substituting therefore, a plurality of arcuate plastic fasteners which are held to the outer pipe wall by an adhesive as suggested by Gauthier where such is an equivalent type of fastener used to suspend secondary conduits to the interior of larger pipes where such would insure the secondary pipe stay attached and would be attachable to various types of outer pipes thereby reducing costs in repair.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fair in view of Gauthier as applied to claims 3-9 and 13-19 above, and further in view of Finzel. The patent to Fair as modified discloses all of the recited structure with the exception of stating what material the second pipe is made of. The patent to Finzel discloses the recited sanitizing pipe system for waste water comprising an outer pipe AR, a second pipe LR, a system of supports AH that in combination with a liner IL1 trap and hold the second conduit inside of the outer pipe, where Finzel states the casings which inherently would include the extra second pipe above, are made of HDPE. It would have been obvious to one skilled in the art to modify the second pipe of Fair as modified to be formed of any material where it is known in the art to form secondary pipes of HDPE as suggested by Finzel where such would allow the secondary pipe to last longer thereby saving money where plastics are known to be less likely to degrade over time.

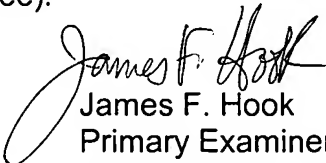
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Penza (612 and 730), Second, Young, Chen, Ziu, Madhani, and Engle disclosing state of the art pipes in pipes which are held in by various different articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
Art Unit 3754

JFH